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October 28, 2019

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Federal Election Commission
Attn.: Esther Gyory, Acting Assistant General Counsel
1050 First Street NE
Washington, DC 20463

Re: Notice of Proposed Rulemaking

Dear Ms. Gyory:

I submit this comment on behalf of the Perkins Coie LLP Political Law Group in response to the Federal Election Commission's (the "FEC's" or the "Commission's") Notification of Availability regarding a petition for rulemaking on reporting for the national party committees' segregated party accounts. This comment is not submitted on behalf of any client, but instead is submitted as practitioners with extensive experience with the specific types of entities affected by the Federal Election Campaign Act of 1971 ("FECA") and the amendments to FECA by the Consolidated and Further Continuing Appropriations Act, 2015 (the "Appropriations Act"). In sum, it is inappropriate for the Commission to engage in a rulemaking on one small sliver of the issues concerning the national party committee segregated accounts, without providing at least basic guidance regarding the overall operation and use of the accounts themselves.

On January 8, 2016, we submitted a separate petition for rulemaking with the Commission (the "2016 Petition") asking the Commission to do just that. Specifically, we requested that the Commission adopt new, and revise its current, regulations to implement amendments to the FECA made by the Appropriations Act. The 2016 Petition is attached as Exhibit A to this comment and is incorporated by reference in full herein.[1] As outlined in the 2016 Petition, many Commission regulations are now obsolete, or need to be amended, in light of the Appropriations Act. Entirely new regulations are also warranted to provide clarity on what the FEC considered to be a permissible use of the funds in each of the national party committees segregated accounts. We outlined which regulations should be added or amended in the 2016 Petition, and regulations on reporting was part of that request. Our position on the need for comprehensive new and amended regulations on the segregated party accounts remains the same and we again call for the FEC to issue full guidance on all areas of the law on the national party committees' segregated accounts.

[1] On October 7, 2016, the Commission issued a Notice of Availability requesting comments to that petition. Fed. Election Comm'n, Rulemaking Petition: Implementing the Consolidated and Further Continuing Appropriations Act, 2015, 81 Fed. Reg. 69722 (Oct. 7, 2016). But, as far as we are aware, the Commission has not issued any proposed regulations in response to that petition or any comments received related to it.

It is nonsensical for the Commission to undertake a rulemaking on reporting related to the national party committees' segregated accounts without first, or simultaneously, providing guidance about what expenses may be paid from those accounts in the first place. Doing otherwise will create confusion to the regulated community and the public. Obviously, the contours of how funds may permissibly be raised into the accounts, what those funds may be used for, how expenses may be allocated across accounts, and other such issues are inexorably linked to the reporting rules concerning the accounts.

We reiterate and adopt all the suggestions in our 2016 Petition herein and urge the Commission to adopt a comprehensive set of regulations on the national party committees' segregated accounts that provides much needed guidance on these accounts.

Respectfully submitted,

Marc E. Elias
Chair
Perkins Coie LLP Political Law Group

EXHIBIT A

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January 8, 2016

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Federal Election Commission
Daniel A. Petalas, Acting General Counsel
Office of the General Counsel
999 E Street, NW
Washington, DC 20463

Re: Petition for Rulemaking

Dear Mr. Petalas:

On behalf of the Perkins Coie LLP Political Law Group, I submit this petition for a rulemaking pursuant to 11 C.F.R. § 200.2 requesting that the Federal Election Commission (the "FEC," "Commission" or "Agency") adopt new, and revise its current, regulations to implement amendments to the Federal Election Campaign Act of 1971 ("FECA") made by the Consolidated and Further Continuing Appropriations Act, 2015 (the "Appropriations Act"). We submit these comments not on behalf of any client, but as practitioners with extensive experience with the specific types of entities affected by the Appropriations Act and how Commission rules affect their operations.

The Appropriations Act amended FECA by establishing certain new accounts for national party committees.[1] Under the law, enacted in 2014, national party committees like the Democratic National Committee or the Republican National Committee (the "DNC" or "RNC," respectively) may establish three new accounts, each of which is subject to its own contribution limits: a "convention account," a "headquarters account," and a "recount and litigation account" (collectively, "the new accounts").[2] National congressional campaign committees of a political party such as the DSCC, NRSC, DCCC, and NRCC may establish headquarters accounts and recount and litigation accounts.[3] Each national party committee may raise three times the current contribution limit into each segregated account per calendar year.[4] These accounts supplement the party committees' regular federal accounts, each of which may raise funds under the limits set forth at 52 U.S.C. § 30116(a)(1)–(2). The Appropriations Act responded in part to previous

[1] Pub. L. No. 113-235, 128 Stat. 2130, 2772 (2014).
[2] 52 U.S.C. § 30116(a)(9).
[3] *Id.* § 30116(a)(9)(B), (C).
[4] *Id.* § 30116(a)(1)–(2). Currently, each national party committee may raise up to $100,200 from individuals and $45,000 from multicandidate political action committees into each of its segregated accounts per calendar year as well as $33,400 into the national party committee's general account.

legislation that eliminated the availability of public funds for presidential nominating conventions.[5]

Congress created these new accounts to fund core national party operations, separate and apart from direct candidate support:

- The convention account was allowed "to defray expenses incurred with respect to a presidential nominating convention (including the payment of deposits) or to repay loans the proceeds of which were used to defray such expenses, or otherwise to restore funds used to defray such expenses;"[6]

- The headquarters account was allowed "to defray expenses incurred with respect to the construction, purchase, renovation, operation, and furnishing of one or more headquarters buildings of the party or to repay loans the proceeds of which were used to defray such expenses, or otherwise to restore funds used to defray such expenses;"[7] and

- The recount and litigation account was allowed "to defray expenses incurred with respect to the preparation for and the conduct of election recounts and contests and other legal proceedings."[8]

I. Regulations for the Three New Accounts

Each of the new accounts established in the Appropriations Act arises in part from previous statutes, regulations and advisory opinions. However, the Appropriations Act does not precisely track these earlier authorities. Thus, the Commission cannot simply recodify these authorities in their past form. Rather, it must consider the Appropriations Act's text, legislative history, structure and purpose, which at bottom provide the parties with more resources to engage in enumerated activities.[9]

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[5] Gabriella Miller Kids First Research Act ("Research Act"), § 2(a), Pub. L. No. 113-94, 128 Stat. 1085 (2014).
[6] 52 U.S.C. § 30116(a)(9)(A).
[7] *Id.* § 30116(a)(9)(B).
[8] *Id.* § 30116(a)(9)(C).
[9] *See Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984); *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005).

A. Presidential Nominating Conventions

1. Historical Background

Between 1976 and 2012, pursuant to 26 U.S.C. § 9008, the national party committees were entitled to receive public funds from the U.S. Treasury to defray the cost of operating their presidential nominating conventions. In order to receive such funds, Commission regulations required the national party committees to each "establish a convention committee [to] be responsible for conducting the day to day arrangements and operations of that party's presidential nominating convention."[10] The FEC also established a regime of permissible "convention expenses" to require the convention committees to use the public funds only for the convention and not for other general party-building or advocacy work.[11]

In 2014, Congress eliminated the national party committees' entitlement.[12] Congress provided no replacement. National party committees were left to identify private sources of funding for their presidential nominating conventions within the normal contribution limits.[13]

Soon after, the DNC and RNC requested an advisory opinion from the FEC on how to permissibly raise funds for their presidential nominating conventions.[14] The FEC said that the DNC and RNC could:

> each establish a convention committee to raise and spend federal funds for convention expenses under a separate contribution limit because these convention committees would be "national committees" within the meaning of the [FECA], and Commission regulations provide that each "national committee" is subject to its own contribution limits.[15]

These convention committees are "equivalent to the parties' House and Senate campaign committees for . . . contribution limits," so contributions raised or spent by convention committees are separate from the contributions raised or spent by the DNC or RNC or any other

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[10] 11 C.F.R. § 9008.3(a)(2).
[11] *See id.* § 9008.7.
[12] Research Act, § 2(a), Pub. L. No. 113-94, 128 Stat. 1085 (2014).
[13] In the past, while the national political party committees and their convention committees could legally solicit contributions for convention expenses, they generally did not do so because any amounts raised and spent would require a corresponding reduction in public funds to which they were entitled. 11 C.F.R. §§ 9008.6(a)(2), 9008.8(a).
[14] FEC Adv. Op. 2014-12 (DNC, RNC).
[15] *Id.*

national party committee.[16] In its advisory opinion, the FEC specifically did not address the requestors' "alternative proposal to receive and solicit funds through segregated accounts."[17]

2. New Regulatory Framework

The FEC should revise its rules to expressly acknowledge that (i) national committees of a political party (other than a national congressional campaign committee of a political party) may create convention accounts and use the funds in their convention accounts "solely to defray expenses incurred with respect to a presidential nominating convention (including the payment of deposits) or to repay loans the proceeds of which were used to defray such expenses, or otherwise to restore funds used to defray such expenses" and (ii) the aggregate amount of expenditures from this account may not exceed $20,000,000 with respect to any single convention.[18] The FEC should keep the following principles in mind when drafting new regulations implementing these statutory provisions:

- Congress intended to allow convention accounts "to be used in the same manner as the former public funds [for conventions] could have been used."[19] Thus, the FEC should define "expenses incurred with respect to a presidential nominating convention" to include, but not be limited to, permissible uses of public funds for conventions in 11 C.F.R. § 9008.7(a). Like 11 C.F.R. § 9008.7(a), the new definition should not be exhaustive but should list permissible examples. National party committees should be able to utilize their convention accounts for any expenses related to their convention.

- Also, because funds in the convention account must be used for "expenses incurred with respect to a presidential nominating convention," it is appropriate for the FEC to retain the prohibitions described in 11 C.F.R. § 9008.7(b) and to limit the use of funds in the new convention account accordingly. No additional restrictions are called for or necessitated by the Appropriations Act.

- The Appropriations Act specifically provides that a convention account may be used to "otherwise [] restore funds used to defray such expenses."[20] The FEC's regulations should allow a national party committee to use its convention account to reimburse its general account for expenses that could otherwise be paid with the committee's convention account directly. A committee should be able to use its convention account to

[16] *Id.*
[17] *Id.*
[18] 52 U.S.C. § 30116(a)(9)(A).
[19] 160 Cong. Rec. H9286 (daily ed. Dec. 11, 2014) (statement of Rep. Boehner); 160 Cong. Rec. S6814 (daily ed. Dec. 13, 2014) (statement of Sen. Reid).
[20] 52 U.S.C. § 30116(a)(9)(A).

reimburse its general account at any point in time for the payment of any permissible convention expenses.

- As noted above, the Appropriations Act sets a $20,000,000 per convention expenditure limit for each national party committee's convention account.[21] Consistent with 11 C.F.R. § 9008.8(b) addressing expenditure limits for publicly funded conventions, the FEC should provide an explicit list of payments that may be made that are not considered expenditures subject to this $20,000,000 expenditure limit. Further, the regulations should explain that expenditures made from a national party committee's general account or from a convention committee for permissible convention account expenses that are not reimbursed by the committee's convention account do not count against the convention account's expenditure limit.

- Because Congress explicitly excluded the national congressional campaign committees of a political party from having their own convention accounts, the FEC should specify that the convention account regulations do not apply to a national congressional campaign committee of a political party.

- Any new FEC regulation should explain that expenditures made from the convention account are not allocable to candidates under 11 C.F.R. § 106.1 and are not subject to the coordinated party expenditure limits under 52 U.S.C. § 30116(d)(2)-(4).[22]

B. Headquarters Accounts

1. Historical Background

Before the passage of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), national party committees could maintain a separate building fund to "defray any cost for *construction or purchase* of any office facility not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office."[23] Because these funds were "not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office," they were exempt from the definition of "contribution."[24] The FEC's regulations implementing this provision closely tracked the statutory language[25] and the FEC

[21] *Id.* § 30116(a)(9)(A).
[22] 52 U.S.C. § 30116(d)(5).
[23] 2 U.S.C. § 431(8)(B)(viii), *repealed by* Bipartisan Campaign Reform Act, Pub. L. No. 107-155, 116 Stat. 81, 113 (2002) (emphasis added).
[24] *See* Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,100 (July 29, 2002) (quoting 2 U.S.C. § 431(8)(B)(viii) (repealed 2002)).
[25] *See* 11 C.F.R. § 100.7(b)(12) (repealed 2002).

issued many advisory opinions specifying the purposes for which building fund contributions could be spent. For example, in advisory opinions, the FEC said that expenses constituting "capital expenditures" under the Internal Revenue Code ("IRC") and related Internal Revenue Service ("IRS") regulations were permissible "construction" and "purchase" expenses for the building fund.[26] The FEC also advised that certain expenses referred to as "operating costs" were not permissible "construction" or "purchase" expenses such as property taxes, rent, assessments, charges, utilities, and any other expenses necessary to administer headquarters buildings.[27]

In 2002, in BCRA, Congress removed the building funds exception from the definitions of "contribution" and "expenditure" for national party committees.[28] Since then, the national party committees have paid for expenses for their buildings from their general accounts. Through the Appropriations Act, Congress purposefully revised this earlier policy decision, adopting a new broader allowance for party headquarters so that the parties might have more funds available for direct candidate support.

2. New Regulatory Framework

The Appropriations Act differs in some substantial respects from earlier Commission authority on party building funds. While the Commission can and should draw to some degree from this prior authority, the regulations must also reflect the differences introduced by the Appropriations Act:

- As noted above, pre-BCRA, national party committees could use building funds to "defray any cost for construction or purchase of any office facility."[29] The Appropriations Act is broader than the old building fund exception as it allows for expenditures for "renovation, operation, and furnishing" of headquarters in addition to

[26] FEC Adv. Op. 1983-08 (NRSC); FEC Adv. Op. 1991-05 (Tenn. Democrats) (superseded in part); FEC Adv. Op. 1998-07 (Pa. Democratic Party) (superseded in part); FEC. Adv. Op. 2001-01 (N.C. Democratic Party) ("The [FEC] has concluded that items that would fall under the category of capital expenditures would also be considered the type of expenditures that are legitimately part of the construction of a political party's office facility.") (superseded in part); FEC Adv. Op. 2001-12 (Democratic Party of Wis.) (superseded in part).
[27] FEC Adv. Op. 1983-08 (NRSC); FEC Adv. Op. 1988-12 (Empire Bank); FEC Adv. Op. 1991-05 (Tenn. Democrats) (superseded in part); FEC Adv. Op. 2001-12 (Democratic Party of Wis.) (superseded in part); *see also* FEC Adv. Op. 1994-22 (Combs) (advising that "rental payments should be disclosed . . . as operating expenditures as required by [FECA] and Commission regulations").
[28] *See* Bipartisan Campaign Reform Act, Pub. L. No. 107-155, 116 Stat. 81 (2002).
[29] *See* Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. at 49,100 (quoting 2 U.S.C. 431(8)(B)(viii) (repealed 2002)).

simply "construction" or "purchase" of headquarters.[30] Thus, the text, structure and purpose of the Appropriations Act prohibit a simple recodification of the Commission authorities that previously interpreted the building fund exemption. To the contrary, national party committees should be permitted to use their headquarters accounts to pay for any expenses reasonably related to the construction, purchase, renovation, operation, and furnishing of one or more headquarters buildings, including "operating" expenses that could not be paid for from the old building fund.

- The FEC should make clear that expenses that were permissible "construction" and "purchase" expenses pre-BCRA are also permissible headquarters account "construction" and "purchase" expenses under the Appropriations Act.[31] These expenses should accordingly include those that constitute "capital expenditures" under the IRC and related IRS regulations.[32] The regulations should cross-reference the definition of "capital expenditure" in the IRC and related IRS regulations to ensure that the FEC will use the phrase "capital expenditure" as currently defined by those sources (and as amended in the future) when considering what expenses are among those permissible for the headquarters account.

- The regulations should also state that expenses that are not "capital expenditures" under the IRC and IRS regulations are still permissible headquarters account expenses when they involve renovation, operation or furnishing:

    - For example, permissible "operating" expenses should include, but not be limited to, payments for property taxes and assessments,[33] rent and leases,[34] and building

[30] *Compare* 52 U.S.C. § 30116(a)(9)(B) *with* 2 U.S.C. § 431(8)(B)(viii) (repealed 2002), 52 U.S.C. § 30143(b), and 11 C.F.R. § 300.35 (allowing state or local party committee to expend federal or nonfederal funds to *purchase or construct* an office building).
[31] *See, e.g.*, FEC Adv. Op. 1983-08 (NRSC); FEC Adv. Op. 1991-05 (Tenn. Democrats) (superseded in part); FEC Adv. Op. 1998-07 (Pa. Democratic Party) (superseded in part); FEC Adv. Op. 2001-01 (N.C. Democratic Party) (superseded in part); FEC Adv. Op. 2001-12 (Democratic Party of Wis.) (superseded in part).
[32] FEC Adv. Op. 1998-07 (Pa. Democratic Party) (superseded in part); *see also* FEC Adv. Op. 2001-01 (N.C. Democratic Party) ("The [FEC] has concluded that items that would fall under the category of capital expenditures would also be considered the type of expenditures that are legitimately part of the construction of a political party's office facility.") (superseded in part); *see also* FEC Adv. Op. 2001-12 (Democratic Party of Wis.) (superseded in part).
[33] FEC Adv. Op. 1991-05 (Tenn. Democrats) (superseded in part).
[34] FEC Adv. Op. 2001-12 (Democratic Party of Wis.) (superseded in part); *see also* FEC Adv. Op. 1994-22 (Combs) (advising that "rental payments should be disclosed . . . as operating expenditures as required by [FECA] and Commission regulations").

maintenance, utilities, and any other expenses necessary to administer headquarters buildings.[35]

- The FEC's regulations should state that other operating expenses are also permissible headquarters account expenses. For example, "materials and supplies" that are not capital expenditures, but which are used to operate a headquarters building, should be considered permissible operating expenses, including, but not limited to, (i) components required to repair, maintain, or improve tangible property, (ii) a unit of property that has an economic useful life of 12 months or less, beginning when the property is used or consumed, (iii) a unit of property that has an acquisition or production cost of $200 or less, or (iv) anything else that is otherwise defined by the IRS as a material or supply.[36]

- Previously, the FEC said that "construction" and "purchasing" expenses under the pre-BCRA building fund included certain types of renovation and furnishing expenses. For example, the FEC said "construction" and "purchasing" expenses included expenses for interior and exterior renovations of a party headquarters building that were both cosmetic and structural in nature.[37] Similarly, the FEC said that because furniture and fixtures and similar property were capital expenditures under the IRC and related IRS regulations, they were permissible "construction" and "purchasing" expenses.[38] However, the Appropriations Act says the headquarters account may be used not simply for "construction" and "purchasing" expenses but also for "renovation," "operation" and "furnishing" expenses as separate, discrete categories. Thus, the regulations should make clear that the headquarters account may be used for those types of "renovation" and "furnishing" expenses that the Commission would not have allowed under the former party building fund exemption, because they were not also "construction" or "purchasing" expenses.

- Under the Appropriations Act, the headquarters account can be used "to repay loans the proceeds of which were used to defray such expenses."[39] Thus, the FEC should adopt a regulation explaining that mortgage payments are also permissible headquarters account expenses. Such guidance is consistent with the FEC's pre-BCRA advice.[40] Further, the

[35] *See* FEC Adv. Op. 1988-12 (Empire Bank); FEC Adv. Op. 2001-01 n.5 (N.C. Democratic Party) (superseded in part); FEC Adv. Op. 2001-12 (Democratic Party of Wis.) (superseded in part).
[36] 26 C.F.R. § 1.162-3(c)(1).
[37] FEC Adv. Op. 2001-01 (N.C. Democratic Party) (superseded in part).
[38] *Id.*
[39] 52 U.S.C. § 30116(a)(9)(B).
[40] FEC Adv. Op. 1998-08 (Iowa Democratic Party) (superseded in part); FEC Adv. Op. 1993-09 (Mich. Republican State Comm.) (superseded in part).

FEC should explain that it is permissible to pay any other loans used to finance the construction, renovation, furnishing, or operation of a headquarters building from the headquarters account.

- The Appropriations Act specifically provides that headquarters accounts may be used otherwise to "restore funds used to defray such expenses."[41] Any new regulations should provide that a national party committee may use funds in its general account to pay for expenses that could otherwise be paid for by the committee's headquarters account. In such instances, a committee should be permitted to use its headquarters account to reimburse its general account at any point in time for any permissible headquarters expenses paid from the committee's general account.

- The FEC should also define "headquarters buildings" to encompass those buildings "*located throughout the United States*."[42] Congress explicitly recognized that a national party committee may have multiple headquarters buildings around the country, reflecting the reality that businesses often "have several headquarters."[43] For businesses, "[h]eadquarters are defined as a management center . . . . This general definition of headquarters encompasses regional managerial centers and may include sales offices."[44] This tracks the common dictionary definition of "headquarters" as "a place from which something (such as a business or a military action) is controlled or directed; a place from which a commander performs the functions of command; the administrative center of an enterprise."[45] The FEC's definition of headquarters should reflect the fact that, like businesses, national party committees do not operate out of one building or locale but, in fact, have many different buildings and places from which their activities are directed. The regulations should accordingly define a "headquarters building" to be any building from which the party manages activity or directs or controls party operations.

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[41] 52 U.S.C. § 30116(a)(9)(B).
[42] 160 Cong. Rec. H9286 (daily ed. Dec. 11, 2014) (statement of Rep. Boehner) (emphasis added); 160 Cong. Rec. S6814 (daily ed. Dec. 13, 2014) (statement of Sen. Reid) (emphasis added).
[43] Vanessa Strauss-Kahn & Xavier Vives, *Why and Where Do Headquarters Move?* 6 (Ctr. for Econ. Policy Research, Discussion Paper No. 5070, 2005), http://ssrn.com/abstract=776568. This paper was produced by IESE Business School, University of Navarra in Spain, which is consistently ranked as one of the top ten business schools in the world by the *Financial Times*, *Bloomberg Businessweek*, and *The Economist*. *See The Best International MBAs: One Year Programs*, Forbes (December 30, 2015, 5:25 PM), http://www.forbes.com/international-business-schools/ (IESE Business School ranked 5th); *Global MBA Ranking 2015*, The Financial Times (December 30, 2015 5:27 PM), http://rankings.ft.com/businessschoolrankings/iese-business-school (IESE Business School ranked 7th); *Full Time MBA Ranking 2015*, The Economist (December 30, 2015, 5:28 PM), http://www.economist.com/whichmba/full-time-mba-ranking (IESE Business School ranked 17th).
[44] Strauss-Kahn, *supra* note 48 at 6.
[45] *Headquarter*, Merriam-Webster.com, http://www.merriam-webster.com (last visited Dec. 23, 2015).

- The FEC should prohibit the use of funds in the headquarters account from being used for anything that is unrelated to the construction, purchase, renovation, operation and furnishing of a headquarters building, including the making of contributions or independent expenditures, or for influencing the election of a candidate for federal office.

- Any new FEC regulation should explain that expenditures made from the headquarters account not allocable to candidates under 11 C.F.R. § 106.1 and are not subject to the coordinated party expenditure limits under 52 U.S.C. § 30116(d)(2)-(4).[46]

C. Recount and Litigation Accounts

1. Historical Background

Under FEC regulations adopted prior to BCRA "[a] gift, subscription, loan, advance, or deposit of money or anything of value made with respect to a recount of the results of a Federal election, or an election contest concerning a Federal election, is not a contribution" or an expenditure.[47] These regulations recognized that FECA's "definition of 'election' [did] not specifically include recounts."[48] However, the regulations restricted receipt or use of funds for recounts or contests from those persons who were prohibited from making contributions or donations "in connection with" federal elections.[49] In advisory opinions, the FEC explained that candidates could establish separate entities to raise funds that were not subject to amount limitations but complied with these source restrictions.[50]

In 2006, the FEC considered how BCRA's prohibitions applied to recount fundraising. The Commission allowed candidates to raise funds under a separate limit into a separate account to defray recount and contest expenses, so long as: (1) the funds were all federal funds raised within the source restrictions, amount limitations and reporting requirements of FECA; and (2) the funds were not otherwise used for campaign activity.[51] The FEC explicitly applied this advice to national party committees a few years later.[52] The FEC later clarified that a national party committee could:

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[46] 52 U.S.C. § 30116(d)(5).
[47] 11 C.F.R. §§ 100.91, 100.151.
[48] FEC Adv. Op. 2006-24 n.1 (Republican and Democratic Senatorial Comms.).
[49] 11 C.F.R. § 100.91, 100.151.
[50] *See* FEC Adv. Op. 1978-92 (Miller); FEC Adv. Op. 1998-26 (Landrieu).
[51] *See* FEC Adv. Op. 2006-24 (Republican and Democratic Senatorial Comms.).
[52] FEC Adv. Op. 2009-04 (Franken/DSCC).

- "use its recount funds to pay for recount-related expenses that it will incur before the date of the general election as it prepares for recounts that may occur after the general election;"[53]

- "allocate the cost of certain expenses that are attributable to both recount activities and campaign activities between the main account that it uses for campaign activities . . . and its recount fund;"[54] and

- use recount funds to pay for legal expenses and settlement costs arising from certain non-recount litigation.[55]

Further, the FEC said that a state political party committee that established a recount fund could request that donors redesignate their donations to the recount fund as contributions to the federal campaign account and use recount funds raised in a previous election cycle for recount and election costs in a future recount.[56]

2. New Regulatory Framework

The Appropriations Act permits a national committee of a political party (including a national congressional campaign committee of a political party) to create a recount and litigation account "which is used to defray expenses incurred with respect to the preparation for and the conduct of election recounts and contests and other legal proceedings."[57] The new regulations accordingly should consider the following principles:

- The Explanation of Congressional Intent accompanying the Appropriations Act (the "Explanation") says, with respect to the recount and litigation account, that Congress "intended to permit the national parties to use [their recount and litigation accounts] for costs, fees, and disbursements associated with *other* legal proceedings" beyond recounts, and any regulation defining permissible expenses should reflect this principle.[58] Thus, the regulations should make clear that national party committees may utilize their recount and litigation accounts for all legal proceedings regardless of the subject matter, forum, or parties. Expenses should encompass, but not be limited to, preparation for legal

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[53] FEC Adv. Op. 2010-14 (DSCC).
[54] *Id.*
[55] FEC Adv. Op. 2011-03 (DSCC, RNC, NRCC, DCCC, and NRSC).
[56] FEC Adv. Op. 2010-18 (DFL).
[57] 52 U.S.C. § 30116(a)(9)(C).
[58] 160 Cong. Rec. H9286 (daily ed. Dec. 11, 2014) (statement of Rep. Boehner) (emphasis added); 160 Cong. Rec. S6814 (daily ed. Dec. 13, 2014) (statement of Sen. Reid) (emphasis added).

proceedings, staff salaries, administrative and overhead expenses, attorneys' fees, settlement costs, and other payments to third parties associated with any legal proceeding.

- Further, the Explanation provides that Congress did not intend "to modify Federal Election Commission precedent permitting the raising and spending of [recount] funds by campaign or State or national party committees."[59] Thus, the regulations should not curtail the allowances that the Commission recognized in its previous "recount fund" advisory opinions, but rather reflect the statute's expansion of the amounts that can be raised and the purposes for which funds may be spent.

- Because funds in the recount and litigation account must be used for expenses associated with legal proceedings, the FEC should prohibit the use of funds in the recount and litigation account from being used for anything that is unrelated to legal proceedings.

- Any new FEC regulation should explain that expenses for recounts and litigations for campaigns and national party committees are not allocable to candidates under 11 C.F.R. § 106.1 and are not subject to the coordinated party expenditure limits under 52 U.S.C. § 30116(d)(2)-(4).[60]

- Because Congress intended for funds in the recount and litigation account to defray expenses incurred with respect to legal proceedings, any new regulations should reflect the principle that a national party committee may use funds in its general account to pay for expenses that could otherwise be paid with the committee's recount and litigation account. In such instances, the committee should be permitted to reimburse its general account at any point in time for any permissible legal expenses paid from the committee's general account instead of its recount and litigation account.

D. Regulations Applicable to All New Accounts

The FEC should also amend current, or adopt new, regulations that apply to all of the new segregated accounts created by the Appropriations Act.

- The FEC should amend 11 C.F.R. § 110.1(c) and 11 C.F.R. § 110.2(c) to add the contribution limits to the new separate accounts of national party committees.

- The Appropriations Act amended FECA by providing that the coordinated party expenditure limits in 52 U.S.C. § 30116(d)(2)–(4) do not apply to any expenditures made

[59] 160 Cong. Rec. H9286 (daily ed. Dec. 11, 2014) (statement of Rep. Boehner); 160 Cong. Rec. S6814 (daily ed. Dec. 13, 2014) (statement of Sen. Reid).
[60] 52 U.S.C. § 30116(d)(5).

from any of the new segregated accounts.[61] Accordingly, the FEC should amend 11 C.F.R. §§ 109.30–109.34 to reflect that Congress explicitly excluded expenditures made from any of the new segregated accounts from the coordinated party expenditure limits.

- Because Congress intended that funds in the segregated accounts be used "to pay for the costs of fundraising for" that specific segregated account,[62] the FEC should adopt a regulation that provides that the funds in each of the segregated accounts of a national party committee may be used to raise additional funds for that specific account. Additionally, the regulation should explain that a national party committee may also use its general account to pay for fundraising for its segregated accounts.

- Consistent with 11 C.F.R. § 110.3(c)(1), the FEC should adopt a regulation allowing a national party committee to transfer funds from its general account to any one of its segregated accounts at any point in time. Likewise, it should be permissible for a national party committee to transfer funds from its general account to any of the segregated accounts of any other national party committee of the same party. A national party committee should also be permitted to transfer funds from one of its segregated accounts to any of the same segregated account of any other national party committee of the same party.

- The FEC should adopt a regulation addressing undesignated contributions to a national party committee. A national party committee should be permitted to deposit a donor's undesignated contribution into any of its accounts. Likewise, the regulation should permit a national party committee to transfer an undesignated contribution from one segregated account to another of its segregated accounts, as long as the committee provides notice and the donor has not already contributed the maximum contribution to the ultimate recipient account.

- Currently, federal regulations do not discuss redesignation for national party committees.[63] Redesignations eliminate the need to refund excessive contributions and solicit new contributions that are permissible.[64] National party committees should be

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[61] 52 U.S.C. § 30116(d)(5).
[62] 160 Cong. Rec. H9286 (daily ed. Dec. 11, 2014) (statement of Rep. Boehner); 160 Cong. Rec. S6814 (daily ed. Dec. 13, 2014) (statement of Sen. Reid).
[63] *See* 11 C.F.R. § 110.1(b)(5) (providing for the written redesignation of contributions to a candidate's authorized political committee).
[64] *See* Contribution and Expenditure Limitations and Prohibitions; Contributions by Persons and Multicandidate Political Committees, 52 Fed. Reg. 760, 763 (Jan. 9, 1987) (explaining that redesignations eliminate "the need to refund impermissible contributions and then solicit contributions for another election" for authorized candidate committees).

able to obtain written redesignations of contributions specifically designated by donors for a party's general or segregated account. A national party committee should be able to ask a donor to redesignate his or her previously designated contribution to any one of the committee's other accounts (general or segregated) at any point in time in a calendar year as long as the donor has not already contributed the maximum contribution to the other account. This regulation should reflect the FEC's principles articulated in Advisory Opinion 2010-18 in which the FEC said a state political party committee that established a recount fund could request that donors redesignate their donations to the recount fund as contributions to the party's federal campaign account as long as the donations were within the permissible contributions limits.[65] A national party committee should be permitted to obtain written redesignations at any point in a calendar year as long as the donor has not reached the contribution limit to the new account for which his or her contribution will be designated. The notification should also give the donor the opportunity to obtain a refund instead of redesignating his or her contribution.

- On February 13, 2015, the FEC issued guidance on how the national campaign committees should report contributions to and expenditures from the new segregated accounts.[66] The FEC should amend its reporting regulations to reflect the principle that the national party committee must report contributions to and expenditures from their separate accounts on their regular reports.

- The FEC should revise 11 C.F.R. § 106.5, which currently addresses the allocation of expenses between federal and non-federal activities for national party committees to address the allocation of expenses for the new segregated accounts.[67] This regulation should reflect the principle articulated in Advisory Opinion 2010-14 that a national party committee may "allocate the cost of certain expenses that are attributable to both recount activities and campaign activities between the main account that it uses for campaign activities . . . and its recount fund."[68] The regulation should allow national party committees the flexibility to allocate expenses based on any reasonable basis, which may include, but is not limited to, a formula based on the funds received, or by calculating on a monthly basis how much of the spending was attributable to specific accounts and making corrective transfers as needed.[69] The FEC's new regulation should clarify that a national party committee is not required to allocate expenses paid solely from the

[65] FEC Adv. Op. 2010-18 (DFL).
[66] Press Release, FEC, FEC Issues Interim Reporting Guidance for National Party Committee Accounts (Feb. 13, 2015), *available at* http://www.fec.gov/press/press2015/news_releases/20150213release.shtml.
[67] The FEC should correspondingly revise the heading of 11 C.F.R. § 106.5 to reflect the new text as well.
[68] FEC Adv. Op. 2010-14 (DSCC).
[69] *See, e.g.*, 11 C.F.R. § 106.5(f).

committee's general fund for any segregated account activity because the general fund may be used for any activity of the segregated accounts.

II. New Regulations for Convention Committees

The FEC should also adopt new regulations, and amend its current regulations, to address convention committees that are funded through contributions:

- The new regulations should explain that convention committees are national committees of a political party and thus, are subject to their own annual contribution limit separate from that of any other national party committee. Further, the regulations should codify that there is no expenditure limit for a convention committee.

- The FEC should also adopt regulations that are consistent with Advisory Opinion 2014-12, which requires that convention committees use their funds for the same types of convention expenses that were permissible for publicly funded convention committees under 11 C.F.R. § 9008.7. This regulation on permissible and prohibited expenses for convention committees should also mirror the broader definition of permissible convention account expenses discussed above for convention accounts.

- The FEC's regulations should allow a convention committee to reimburse the general or convention accounts of the national party committee for any costs the committee incurs with respect to its presidential nominating convention.

- Consistent with 11 C.F.R. § 110.3(c)(1), any new regulations should explain that national party committees may make unlimited transfers from their general and convention accounts to the convention committees of their respective parties. The congressional party committee of a political party may also make unlimited transfers from its general accounts to the convention committee of its political party. Further, the convention committee should be permitted to make unlimited transfers to the convention account of the national party committee since convention accounts can be used for the same purposes as the convention committees' funds.

- As a national committee of a political party, convention committees are required to file monthly disclosure reports like any other national party committee under 11 C.F.R. § 104.5(c)(4). The FEC should adopt a regulation that explains that this reporting obligation applies to convention committees. The FEC may consider adding language that reflects that convention committees are subject to all other legal obligations applicable to national party committees specifically, and political committees generally.

As part of its rulemaking, the FEC should remove many of the current regulations in 11 C.F.R. Part 9008, subpart A that govern the public financing of convention committees because those regulations are now obsolete. Accordingly:

- The FEC should remove 11 C.F.R. § 9008.1, which describes the scope of the public financing program for conventions and provides additional reporting requirements of convention committees that are no longer necessary because, as national committees of political parties, convention committees are required to file monthly disclosure reports pursuant to 11 C.F.R. § 104.5(c)(4).

- To the extent that any of the definitions under 11 C.F.R. § 9008.2 are no longer relevant because of the elimination of other provisions described herein, they should be removed.

- The FEC should remove 11 C.F.R. § 9008.3, which addresses eligibility for public financing and registration and reporting requirements of a convention committee. The registration and reporting provisions are duplicative of the requirements under 11 C.F.R. § 102 *et seq.* and 104.5(c)(4). Likewise, the procedural regulations in 11 C.F.R. § 9008.15 discussing extensions of time for reports filed under part 9008 should also be eliminated.

- Because convention committees are no longer using public funds, the concerns underlying many of the other provisions of 11 C.F.R. § 9008.3 are obsolete and the regulation should be removed. This is also true for 11 C.F.R. §§ 9008.11 and 9008.13, which provide for automatic audits and for cause audits, respectively, for convention committees. Audits of the new convention committees are addressed under 11 C.F.R. § 104.16.

- The FEC should also remove 11 C.F.R. §§ 9008.4 and 9008.5, which regulate the payouts of public convention funds, and 11 C.F.R. § 9008.6, which allows a national committee to decline public funds and raise private funds to finance its convention.

- The FEC should eliminate 11 C.F.R. § 9008.7 because it addresses permissible and prohibited uses of funds provided under the public financing program.

- Similarly, 11 C.F.R. §§ 9008.8 and 9008.9(d) should be removed because they address the expenditure limitation that previously applied to publicly funded convention committees.

- The FEC should also eliminate 11 C.F.R. § 9008.10 because it imposes heightened disclosure requirements on convention committees that are not needed when public funds are not involved.[70]

- The FEC should remove 11 C.F.R. § 9008.12 because it concerns repayments of public convention funds. Similarly, the FEC should remove 11 C.F.R. § 9008.14, which addresses repayments for private funds that exceed the convention expenditure limit, and 11 C.F.R. § 9008.16, which discusses repayment of uncashed checks written by a committee for publicly funded convention expenses.

- The FEC should also remove 11 C.F.R. §§ 9012.1(b), 9012.3(b), and 9012.5(b) because they implement criminal penalties that Congress has repealed.[71]

- Finally, 11 C.F.R. § 9008.54 should also be eliminated because that regulation was based on the fact that public funds were used to finance conventions.[72]

Notwithstanding the above, the FEC should keep and amend some of the provisions of 11 C.F.R. part 9008.[73] Specifically, the FEC should keep the provisions addressing commercial vendors under 11 C.F.R. § 9008.9(a)–(c) as these regulations are not impacted by the elimination of public financing for presidential nominating conventions and apply regardless of the funding source for nominating conventions. Further, except for 11 C.F.R. § 9008.54, the FEC should keep the provisions in 11 C.F.R. part 9008, subpart B addressing host committees and municipal funds representing a convention city. These regulations were not affected by the elimination of public financing for presidential nominating conventions.

We appreciate the Commission's consideration of this petition.

Very truly yours,

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Chair
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[70] *See* 11 C.F.R. § 104.5(c)(4).
[71] *See* Research Act, 2014, § 2(a), Pub. L. No. 113-98, 128 Stat. 1085 (2014).
[72] Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions, 44 Fed. Reg. 63,036, 63,038 (Nov. 1, 1979).
[73] The FEC should renumber the provisions it has decided to keep and should consider combining them with the new regulations that should be implemented for convention accounts and convention committees discussed in Section I.A and B above.